Ingram v. *Mathieu,* 3 Mo. 209; *Van Brocklen* v. *Smeallie,* 140 N. Y. 70. See 3 BENJAMIN, SALES, 1023. On the other hand, in Indiana and other states, it is declared that such notice is indispensable, "a material element in the cause of action and must be stated in the complaint." *Dill* v. *Mumford,* 19 Ind. App. 609 and cases cited. (See also in accord: *Davis Sulphur Ore Co.* v. *Atlanta Guano Co.,* 109 Ga. 607, upon which the principal case was decided); *Bowsner* v. *Cessna,* 62 Pa. St. 148; *Granberry* v. *Frierson,* 2 Baxt. (Tenn.) 326; *Leonard* v. *Portier,* 15 S. W. 414 (Tex.); *American Hide Co.* v. *Chalkley,* 101 Va. 548; *Pratt* v. *Freeman Mfg. Co.,* 115 Wis. 648; *Hayes* v. *Nashville,* 80 Fed. 641, 26 C. C. A. 59. Mr. MECHEM, in his work on SALES, (§ 1624), states the rule as follows: "unless the goods are perishable, or other special circumstances would render notice impracticable or unavailing, notice of the seller's intention to resell must be given, if the seller intends to make the price realized upon the sale the basis of his recovery against the buyer." See *Penn* v. *Smith,* 98 Ala. 560; *Holland* v. *Rea,* 48 Mich. 218; *Green* v. *Ansley,* 92 Ga. 647; *Davis Sulphur Ore Co.* v. *Atlanta Guano Co.* (supra). Notice may be waived by the buyer, and such waiver will be presumed where the buyer tells the seller he may do what he pleases with the goods. *Wrigley* v. *Cornelius,* 162 Ill. 92. Notice of time and place of sale (as distinguished from intention to sell) need not be given. *Magnes* v. *Sioux City Nursery Co.,* 14 Colo. App. 219; *Van Brocklen* v. *Smeallie,* supra; *Leonard* v. *Portier* (Tex.), 15 S. W. 414; *Pratt* v. *Freeman Mfg. Co.,* 115 Wis. 648.

TORTS—MASTER'S LIABILITY FOR ASSAULT AS AFFECTED BY PROVOCATION OF SERVANT.—Plaintiff, a passenger on defendant street railway, engaged in an altercation with the motorman in which the latter used much profanity and vile language. Plaintiff sued for an assault and battery. Defendant introduced evidence to show that the plaintiff provoked the assault. Plaintiff proved no actual assault and battery, and the court *held* that the evidence as to provocation was sufficient to justify the jury in acquitting the defendant. *Binder* v. *Georgia Railway and Electric Co.* (Ga. 1913), 79 S. E. 216.

As a general rule the mere fact that a servant has been provoked into an assault will not excuse the master from liability, especially if the master be a carrier. *Baltimore & Ohio R. Co.* v. *Barger,* 80 Md. 23; *Central R. Co.* v. *Brown,* 113 Ga. 414; *Birmingham R. & Electric Co.* v. *Baird,* 130 Ala. 350, 54 L. R. A. 752; *Chicago and E. R. Co.* v. *Flexman,* 103 Ill. 546; *Birmingham R. and Power Co.* v. *Mullen,* 138 Ala. 614. The cases are collected and carefully examined in *Mason* v. *Nashville, Chattanooga and St. Louis Ry.,* 135 Ga. 741, 33 L. R. A. N. S. 280, and the rule there announced is that words may or may not amount to a justification according to the nature and extent of the assault, all of which will be determined by the jury. The cases holding that provocation by the plaintiff will furnish justification as a matter of law are not numerous, and as a rule are decided on the ground of contributory negligence on the part of the plaintiff. *Wise* v. *Covington & C. Ry. Co.,* 17 Ky. Law Rep. 1359; *Peavy* v. *Georgia Ry. & Bkg. Co.,* 81 Ga. 485, 12 Am. St. Rep. 334.